

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5

CAIGEANN MECHANICAL CO., INC.<sup>1</sup>

Employer

and

Case 5-RC-16497

STEAMFITTERS LOCAL 602, UNITED  
ASSOCIATION OF THE JOURNEYMEN  
AND APPRENTICES OF THE PLUMBING  
AND PIPE FITTING INDUSTRY OF THE  
UNITED STATES AND CANADA, AFL-CIO<sup>2</sup>

Petitioner

**Decision and Direction of Election**

The Employer, Caigeann Mechanical Company, Inc. is a mechanical contractor operating in the state of Maryland. The Employer has four employees: two journeymen pipefitters; one apprentice; and one helper. It also utilizes two independent contractors who perform estimating, accounting, and financial services. The Petitioner, Steamfitters Local 602, United Association of the Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent:

All employees employed by the employer performing duties set forth in Article VI of the recently expired Building and Construction Agreement between the Mechanical Contractors Association of Metropolitan Washington, Inc. and Steamfitters Local 602, United Association, and all employees performing duties as set forth in Article III of the Supplemental Service

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<sup>1</sup> The Employer's name appears as amended at hearing.

<sup>2</sup> The Petitioner's name appears as amended at hearing.

Agreement who are employed in the territorial area set forth in  
Section 3 of the Building and Construction Agreement.

Excluded from the petitioned-for unit are all other employees, office clerical employees, professional employees and supervisors as defined by the Act.

As evidenced at the hearing held by an officer of the Board, the sole issue presented was whether the petitioned-for bargaining unit should include apprentices and helpers. The parties agree that journeymen pipefitters are properly included in the unit.

The Employer contends that only the journeymen pipefitters should be included in the unit because the Petitioner did not properly petition for the inclusion of the apprentices and helpers on the petition form. The Employer further asserts that apprentices and helpers should not vote in the representation election because they lack voting rights in internal union elections. The Petitioner, in contrast, argues that journeymen pipefitters, apprentices, and helpers share a sufficient community of interest such that a single bargaining unit is an appropriate unit. The Petitioner further contends that these three classifications have historically been included in the same unit. The Petitioner also responds that voting rights in internal union elections are not a relevant factor in the Board's determination of an appropriate bargaining unit. There are approximately four employees in the unit sought by the Petitioner, while the unit the Employer urges would include two employees.

I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I conclude that journeymen pipefitters, apprentices, and helpers constitute a presumptively appropriate craft unit, and that the Employer has not sustained its burden of rebutting that presumption. Accordingly, I shall direct an election in a unit that consists of approximately four employees.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present the facts and reasoning that supports each of my conclusions on the issues.

## **I. OVERVIEW OF OPERATIONS**

The Employer is a mechanical contractor operating in the state of Maryland. The Employer installs mechanical and plumbing systems, such as HVAC heating and cooling piping, in commercial buildings. The Employer currently has four employees, including two journeymen pipefitters, one apprentice, and one helper; it also utilizes two independent contractors. The Employer's overall operations are under the supervision of its sole owner and operator, Ms. Donna Fleming. Daily oversight of the journeymen, the apprentice, and the helper is performed by a lead foreman, who is selected by the Employer for each project.

The Employer maintains a headquarters facility in Ellicott City, Maryland, as well as a warehouse and small office in Beltsville, Maryland. Each day the journeymen pipefitters, the apprentice, and the helper report directly to the work site. These employees will report to the warehouse or offices only on the rare occasion there is a safety meeting or to pick up supplies on an as-needed basis. The two independent contractors perform accounting, estimating, and other financial services at the Employer's office locations. Neither party contends that these two individuals should be included in the unit found appropriate.

The Employer is a member of the Mechanical Contractors Association of Metropolitan Washington, Inc. ("MCA") and is a signatory to the recently-expired collective-bargaining agreement between the Petitioner and the MCA. That collective-

bargaining agreement covered journeymen pipefitters, apprentices, and helpers. The contract was in effect from August 1, 2007 until July 31, 2010, and, although the contract expired, the Employer continues to adhere to its terms.

**A. The Journeymen Pipefitters**

The Employer employs two full-time journeymen pipefitters who are affiliated with the Petitioner union, Steamfitters Local 602. The journeymen are licensed by the state of Maryland after completing the union's five year apprentice program. The duties and responsibilities of the journeymen are extensive and varied. For example, the journeymen pipefitters perform all tasks associated with installing, maintaining, servicing, and dismantling all pipe or piping systems for all heating systems and cooling systems. The full extent of the journeymen pipefitters' and apprentices' duties are described in Article VI of the expired collective-bargaining agreement.

The journeymen report directly to the work site each day in their personal vehicles. One of the journeymen is selected by the Employer as the lead foreman. Their daily work schedule is 6:00 am to 2:00 pm with one 10 to 15-minute break. There is no time clock, but the lead foreman performs a head count of the crew at the beginning and the end of each work day. The lead foreman works with his tools as well as performing these other duties.<sup>3</sup> No particular uniforms are required for the journeymen pipefitters, and protective clothing is provided by the Employer.

If overtime work is available, the journeymen will be asked whether they are available to work overtime. If they do work overtime, they are paid time-and-a-half for

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<sup>3</sup> The burden of establishing supervisory status rests on the party asserting that status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001). Since, neither party contends that the lead foreman, whomever may be chosen, is a supervisor who should be excluded from the bargaining unit, the lead foreman is included in the unit found appropriate.

any hours worked beyond 40 hours per week. The journeymen pipefitters are paid on an hourly basis according to the terms of the recently expired collective-bargaining agreement. They also receive medical and pension benefits, but there is no sick leave.

**B. The Apprentice**

The Employer employs one apprentice pipefitter who is in the first year of the union's apprentice program. As indicated by Article VI of the recently-expired collective bargaining agreement, the duties of an apprentice pipefitter are commensurate with those the journeymen pipefitters. The apprentice, however, must work under the direction of a qualified journeyman. After the first year of the apprentice program, the apprentice is able to perform all of the pipefitting work and is only limited by his capabilities.

The apprentice, like the journeymen, reports directly to the work site to begin work each day. He works at the site with the journeymen and the helper, and is supervised by the project foreman. The apprentice works the same 6:00 am to 2:00 pm schedule as the journeymen and helper, with the one 10 to 15-minute break. He does not clock in or out; rather his attendance is accounted for by the lead foreman. No work uniforms are required for the apprentice, and protective clothing is provided by the Employer.

As per the contract, the apprentice is paid an hourly wage that increases each year of the apprentice program. If overtime work is available for an employee with the apprentice's skill level, it will be offered to the apprentice and he will be paid at time-and-a-half. The apprentice has health benefits but is not eligible for the pension benefits. The apprentice, like the journeymen and the helper, receives no sick leave.

### **C. The Helper**

The Employer employs one helper, referred to as a “mechanical helper” in the recently-expired collective-bargaining agreement. The helper, a member of the Petitioner union, is an unskilled craftsperson with no special training or licensing. The helper’s duties and responsibilities are outlined in Article XL of the contract and include performing preventative maintenance on tools and equipment, general housekeeping at the work site, setting up and tearing down scaffolding, loading and stockpiling materials, tools, and equipment, and cutting, patching and grouting under the direction of a journeyman.

The helper reports directly to the work site each morning. Oversight for the helper, like that of the apprentice and the non-lead journeyman, is by the lead foreman. He works alongside the crew from 6:00 am to 2:00 pm each day and he takes the same break. The helper’s work attendance is tracked by the project foreman. The helper is paid an hourly wage as dictated by the terms of the expired collective-bargaining agreement. He receives health benefits under the contract, but no retirement benefits and no sick leave. The helper is not required to wear a uniform, but is given protective gear.

## **II. APPROPRIATE UNIT**

The Board uses a two step procedure to determine an appropriate unit under Section 9(b) of the Act. *Boeing Co.*, 337 NLRB 152, 153 (2001). First, the petitioned-for unit is examined; if the unit is found appropriate, the inquiry ends. *Id.* If that unit is found not to be appropriate, the alternative units suggested by the parties or of the Board’s creation may be selected. *Id.* The Board has broad discretion in this area,

reflecting Congress' recognition of the need for flexibility in shaping the bargaining unit.

*Overnite Transportation Co.*, 322 NLRB 723, 723 (1996).

It is well settled that the Board will give substantial weight to the parties' bargaining history when considering whether a bargaining unit is appropriate. *Canal Carting, Inc.*, 339 NLRB 969, 970 (2003). The existence of significant bargaining history will "weigh heavily in favor of finding that a historical unit is appropriate" and "the party challenging the historical unit bears the burden of showing that the unit is no longer appropriate." *Id.*

In addition to bargaining history, the Board closely examines whether a community of duties and interests exists among the employees in the petitioned-for unit. *Overnite Transportation*, 322 NLRB at 724. If the employees share a sufficient community of interest, the fact that different groups of employees have varying duties and responsibilities does not make a unit of those employees necessarily inappropriate. *Brea Publishing Co.*, 140 NLRB 516, 518 (1963). Examples of the types of community of interest factors that the Board will consider include: (a) the degree of functional integration among employees; (b) common supervision of employees; (c) interchangeability and contact among employees; (d) work situs; (e) general working conditions; (f) fringe benefits. *Casino Aztar*, 349 NLRB 603, 604 (2007); *United Rentals, Inc.*, 341 NLRB 540 (2004); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). The right of employees to vote in internal union elections is not a relevant factor in the Board's analysis of an appropriate bargaining unit.

After examining the parties' bargaining history and the employees' shared community of interest, I find that the petitioned-for-unit, including journeymen

pipefitters, apprentice pipefitters, and helpers, is an appropriate unit for the purposes of collective bargaining.

**A. The Bargaining History**

The hearing record demonstrates that the Petitioner union and the Employer have an established bargaining relationship that dates back to at least August 2007. The most recent collective-bargaining agreement between the parties ran from August 1, 2007 through July 31, 2010. Under that agreement, the journeymen pipefitters, apprentices, and helpers were members of the same bargaining unit. The fact that this is a “historical unit” strongly suggests that it is an appropriate unit, and places the burden on the Employer to prove otherwise. *Canal Carting, Inc.*, 339 NLRB 969, 970 (2003).

**B. The Community of Interest Factors**

An examination of the community of interest among the journeymen, apprentices, and helpers clearly demonstrates that these employees may form an appropriate bargaining unit.

*The Degree of Functional Integration*

The journeymen, apprentice, and helper each depend on the other members of the crew in order to be successful in completing their designated work. According to the collective bargaining agreement, the journeymen and apprentices can do the same pipefitting work, but the apprentice must work with a qualified journeyman. The helper is equally integrated into the crew’s work in that his efforts in maintaining the tools and equipment, moving supplies, and cleaning the work site promote the efficiency of the journeymen and the apprentice.



Common Supervision

The Employer's overall operations are run by Ms. Fleming, the owner of the company. The record shows, however, that oversight at the work site is performed by one of the journeymen pipefitters, who is designated as the lead foreman.

Interchangeability and Contact among Employees

There is daily contact between the journeymen pipefitters, the apprentice, and the helper as they all work together at the same site. Moreover, there is a strong degree of interchangeability between the journeymen and the apprentice because employees in both of these classifications are allowed to do the same pipefitting work. Although helpers are not permitted to perform any skilled pipefitting work, an apprentice or journeyman will perform the helper's work if he is absent.

Work Situs

The employees in the petitioned-for unit work together each day, wherever that day's work site is located. Although the Employer has a headquarters facility, a warehouse, and another office, the journeymen, the apprentice, and the helper rarely visit those locations. Instead, these employees work each day at their designated work site.

General Working Conditions

All three classifications in the petitioned-for unit share identical working conditions. For example, the journeymen, the apprentice, and the helper work the same 6:00 am to 2:00 pm shift with one 10 to 15-minute break. All three classifications are paid hourly according to the terms of the expired collective-bargaining agreement and will earn time-and-a-half for overtime. None of these employees is required to wear a

special uniform and the lead foreman is the timekeeper for all of the employees on the crew.

Fringe Benefits

The journeymen pipefitters, the apprentice, and the helper are all eligible for health benefits under the contract. In addition, they all receive nine paid holidays and none of them has sick leave. The journeymen enjoy pension and retirement benefits, however, the apprentice and the helper do not.

**C. Conclusion**

The parties' have a history of bargaining that is based on a single unit including the journeymen, apprentices, and helpers. Moreover, employees in all three classifications share a substantial community of interest as demonstrated by their common supervision, single work situs, a high degree of functional integration, daily employee contact, and frequent interchangeability among the journeymen, apprentice and the helper. These employees also share identical working conditions and are covered by the same health benefits. Finally, the petitioned-for unit consists of a distinct and homogenous group of skilled craftsmen, together with their helpers and apprentices, which has long been held to be presumptively appropriate. See, e.g., *Burns and Roe Services Corp.*, 313 NLRB 1307 (1994); *American Potash Corp.*, 107 NLRB 1418 (1954). Accordingly, I find that the petitioned-for unit of journeymen, apprentices, and helpers is an appropriate unit for the purposes of collective bargaining.

**D. The Voter Eligibility Formula**

In order to determine voter eligibility for representation elections in the construction trade, the Board applies the *Daniel/Steiny* formula unless the parties

stipulate to the contrary. *Steiny & Co.*, 308 NLRB 1323 (1992). The *Daniel/Steiny*

formula specifies that:

[I]n addition to those employees who are eligible to vote under the traditional standards, laid-off unit employees are eligible to vote in an election if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters.

*Daniel Construction Co.*, 133 NLRB 264, 267 (1961), modified 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Co.*, 308 NLRB 1323 (1992), overruling *S.K. Whitty & Co.*, 304 NLRB 776 (1991).

The parties did not agree on whether the *Daniel/Steiny* formula should be used. At the hearing, the Petitioner took the position that the formula is applicable in this case. The Employer objected to its use, but presented no testimony as to why the formula is inappropriate here. Accordingly, I find that that the *Daniel/Steiny* formula, as set forth above, is the appropriate voter eligibility formula to be applied in this case.

### III. CONCLUSIONS AND FINDINGS

Under Section 3(b) of the Act, I have authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed;

2. The Employer, Caigeann Mechanical Co., Inc., is a Maryland corporation with an office and place of business in Ellicott City, Maryland and is engaged in the building and construction industry providing mechanical services, including installation of heating and air conditioning equipment to non-residential customers. During the 12 month period ending July 31, 2010, the Employer in conducting its business operations, purchased and received at its jobsites located in the State of Maryland goods valued in excess of \$50,000 from other enterprises, including Ferguson Enterprises, Inc., located within the State of Maryland, which had received these goods directly from points outside the State of Maryland;
3. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purpose of the Act to assert jurisdiction herein;
4. The labor organization involved claims to represent certain employees of the Employer;
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) and Section 2(6) and 2(7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen pipefitters, including lead foremen, apprentices, and helpers engaged in the installation, fabrication, repair, service, and maintenance of piping, heating, ventilation, air conditioning, refrigeration, and mechanical systems including controls appurtenant thereto employed by the Employer, but excluding all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

#### IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Steamfitters Local 602, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO**. The date, time and manner of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.<sup>4</sup>

##### A. *VOTING ELIGIBILITY*

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of issuance of the Notice of Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their

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<sup>4</sup> The parties agreed that a mail ballot is appropriate in this case. Accordingly, I direct that the election in this case be held by mail ballot.

status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

[I]n addition to those employees who are eligible to vote under the above traditional standards, laid-off unit employees are eligible to vote in an election if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters.

**B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of the issuance of the Notice of Election, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.) Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, 8<sup>th</sup> Floor, Baltimore, MD 21202, on or before **September 10, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website [www.nlr.gov](http://www.nlr.gov), by mail, by hand or courier delivery, or by facsimile transmission at (410) 962-2198. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party.

***C. NOTICE OF POSTING OBLIGATIONS***

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the

Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

***Right to Request Review:*** Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

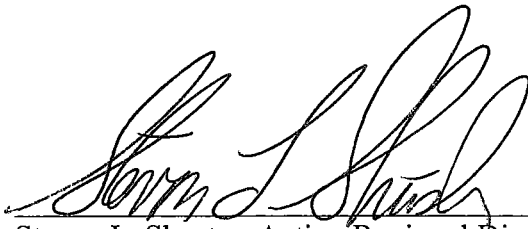
***Procedures for Filing a Request for Review:*** Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **September 17, 2010**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period



within which to file.<sup>5</sup> A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated: September 3, 2010



Steven L. Shuster, Acting Regional Director  
National Labor Relations Board, Region 5  
103 S. Gay Street, 8<sup>th</sup> Floor  
Baltimore, MD 21202

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<sup>5</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.